

lessor of such consent prior to the sale of the immovable to the plaintiff, coupled with the implied consent of the latter to the sub-lease resulting from the fact that he was aware of it for several months without taking action is sufficient: *Vaillancourt v. Saint Denis*, Q.R. 34 S.C. 25; *Jilbert v. Bowen*, Q.R. 36 S.C. 309.

Where a lease contains a covenant not to assign without lessor's consent and an assignment of the lessee's interest in the lease is made, and thereafter the lessor assigns his title, and the lessor's assignee, subsequently learning of the prior assignment by the lessee, accepts rent from the party in possession under the lessee, and later distrained on his goods for other rent, and makes no re-entry, the breach of the covenant not to assign is waived: *Pigeon v. Preston* (No. 3), 8 D.L.R. 126, 22 W.L.R. 694, 49 O.L.J. 76.

A forfeiture for breach of covenant in a lease (except for payment of rent) cannot be enforced by action, or otherwise until after a notice has been served pursuant to sec. 20 (2) of the Ontario Landlord and Tenant Act; this provision is general and applies to both positive and negative covenants: *Harman v. Ainslie*, [1904] 1 K.B. 698; *Walters v. Wylie*, 1 D.L.R. 208, 3 O.W.N. 567, 20 O.W.R. 961.

A forfeiture in a lease is waived if the lessor elects not to take advantage of it and shews his election either expressly by a statement to that effect to the lessee or impliedly by acknowledging the continuous tenancy, and if after a cause of forfeiture has come to his knowledge he does anything to recognize the relation of landlord and tenant as still subsisting, he is precluded from saying he did not do the act with the intention of waiving the forfeiture: *Evans v. Davis* (1878), 10 Ch. D. 747; *Moore v. Ullocoats Mining Co.*, [1908] 1 Ch. 575; *Holman v. Knox*, 3 D.L.R. 207, 3 O.W.N. 745, 25 O.L.R. 588, 21 O.W.R. 325.

Province of Alberta.

SUPREME COURT.

Harvey, C.J., Scott, Stuart, Simmons, and
Walsh, JJ.]

[March 31.]

REX v. HURD.

(10 D.I.R. 475.)

*Criminal law—Evidence—Trial — Confessions — Subordinate
fact—Cross-examination of accused.*

Held, 1. An acknowledgment of a subordinate fact not directly involving guilt and not essential to the crime charged is